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HOUSE BILL 1096

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Padden, Appelwick and Hickel

Read first time 01/12/95. Referred to Committee on Law and Justice.

1            AN ACT Relating to clarifying the Washington limited liability  
2 company act by amending RCW 25.15.005, 25.15.045, 25.15.060, 25.15.085,  
3 25.15.130, 25.15.220, 25.15.250, 25.15.280, 25.15.310, and 24.06.045;  
4 amending RCW 25.15.005, 25.15.045, 25.15.060, 25.15.085, 25.15.130,  
5 25.15.220, 25.15.250, 25.15.280, 25.15.310, and 24.06.045; and  
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            **Sec. 1.** RCW 25.15.005 and 1994 c 211 s 101 are each amended to  
9 read as follows:

10            As used in this chapter, unless the context otherwise requires:

11            (1) "Certificate of formation" means the certificate referred to in  
12 RCW 25.15.070, and the certificate as amended.

13            (2) "Event of dissociation" means an event that causes a person to  
14 cease to be a member as provided in RCW 25.15.130.

15            (3) "Foreign limited liability company" means an entity that is  
16 formed under:

17            (a) ~~((An unincorporated enterprise;~~

18            ~~(b) Organized under the))~~ The limited liability company laws of

19 ~~((a))~~ any state other than ((the laws of)) this state, or ~~((under the))~~

1        (b) The laws of any foreign country((~~+~~  
2        (~~c~~) Organized)) that is: (A) An unincorporated association, (B)  
3        formed under a statute pursuant to which an ((enterprise)) association  
4        may be formed that affords to each of its members limited liability  
5        with respect to the liabilities of the entity((~~+~~)), and ((~~d~~) Is)) (C)  
6        not required, in order to transact business or conduct affairs in this  
7        state, to be registered or ((organized under any statute of this state  
8        other than this chapter)) qualified under Title 23B or 24 RCW, or any  
9        other chapter of the Revised Code of Washington authorizing the  
10       formation of a domestic entity and the registration or qualification in  
11       this state of similar entities formed under the laws of a jurisdiction  
12       other than this state.

13       (4) "Limited liability company" and "domestic limited liability  
14       company" means a limited liability company organized and existing under  
15       this chapter.

16       (5) "Limited liability company agreement" means any written  
17       agreement as to the affairs of a limited liability company and the  
18       conduct of its business which is binding upon all of the members.

19       (6) "Limited liability company interest" means a member's share of  
20       the profits and losses of a limited liability company and a member's  
21       right to receive distributions of the limited liability company's  
22       assets.

23       (7) "Manager" or "managers" means, with respect to a limited  
24       liability company that has set forth in its certificate of formation  
25       that it is to be managed by managers, the person, or persons designated  
26       in accordance with RCW 25.15.150(2).

27       (8) "Member" means a person who has been admitted to a limited  
28       liability company as a member as provided in RCW 25.15.115 and who has  
29       not been dissociated from the limited liability company.

30       (9) "Person" means a natural person, partnership (whether general  
31       or limited and whether domestic or foreign), limited liability company,  
32       foreign limited liability company, trust, estate, association,  
33       corporation, custodian, nominee, or any other individual or entity in  
34       its own or any representative capacity.

35       (10) "Professional limited liability company" means a limited  
36       liability company which is organized for the purpose of rendering  
37       professional service and whose certificate of formation sets forth that  
38       it is a professional limited liability company subject to RCW  
39       25.15.045.

1 (11) "Professional service" means (~~any type of personal service to~~  
2 ~~the public which requires as a condition precedent to the rendering of~~  
3 ~~such service the obtaining of a license or other legal authorization,~~  
4 ~~including, but not by way of limitation, certified public accountants,~~  
5 ~~architects, veterinarians, attorneys at law, and health professions~~  
6 ~~regulated under chapter 18.130 RCW)) the same as defined under RCW  
7 18.100.030.~~

8 (12) "State" means the District of Columbia or the Commonwealth of  
9 Puerto Rico or any state, territory, possession, or other jurisdiction  
10 of the United States other than the state of Washington.

11 **Sec. 2.** RCW 25.15.045 and 1994 c 211 s 109 are each amended to  
12 read as follows:

13 (1) A person or group of persons licensed or otherwise legally  
14 authorized to render professional services within this state may  
15 organize and become a member or members of a professional limited  
16 liability company under the provisions of this chapter for the purposes  
17 of rendering professional service. A "professional limited liability  
18 company" is subject to all the provisions of chapter 18.100 RCW that  
19 apply to a professional corporation, and its managers, members, agents,  
20 and employees shall be subject to all the provisions of chapter 18.100  
21 RCW that apply to the directors, officers, shareholders, agents, or  
22 employees of a professional corporation, except as provided otherwise  
23 in this section. Nothing in this section prohibits a person duly  
24 licensed or otherwise legally authorized to render professional  
25 services in any jurisdiction other than this state from becoming a  
26 member of a professional limited liability company organized for the  
27 purpose of rendering the same professional services. Nothing in this  
28 section prohibits a professional limited liability company from  
29 rendering professional services outside this state through individuals  
30 who are not duly licensed or otherwise legally authorized to render  
31 such professional services within this state. Notwithstanding RCW  
32 18.100.065, persons engaged in a profession and otherwise meeting the  
33 requirements of this chapter may operate under this chapter as a  
34 professional limited liability company so long as each member  
35 personally engaged in the practice of the profession in this state is  
36 duly licensed or otherwise legally authorized to practice the  
37 profession in this state and:

1 (a) At least one manager of the company is duly licensed or  
2 otherwise legally authorized to practice the profession in this state;  
3 (~~and~~) or

4 (b) Each (~~resident manager or~~) member in charge of an office of  
5 the company in this state (~~and each resident manager or member~~  
6 ~~personally engaged in this state in the practice of the profession~~) is  
7 duly licensed or otherwise legally authorized to practice the  
8 profession in this state.

9 (2) If the company's members are required to be licensed to  
10 practice such profession, and the company fails to maintain for itself  
11 and for its members practicing in this state a policy of professional  
12 liability insurance, bond, or other evidence of financial  
13 responsibility of a kind designated by rule by the state insurance  
14 commissioner and in the amount of at least one million dollars or such  
15 greater amount as the state insurance commissioner may establish by  
16 rule for a licensed profession or for any specialty within a  
17 profession, taking into account the nature and size of the business,  
18 then the company's members shall be personally liable to the extent  
19 that, had such insurance, bond, or other evidence of responsibility  
20 been maintained, it would have covered the liability in question.

21 (3) For purposes of applying the provisions of chapter 18.100 RCW  
22 to a professional limited liability company, the terms "director" or  
23 "officer" shall mean manager, "shareholder" shall mean member,  
24 "corporation" shall mean professional limited liability company,  
25 "articles of incorporation" shall mean certificate of formation,  
26 "shares" or "capital stock" shall mean a limited liability company  
27 interest, "incorporator" shall mean the person who executes the  
28 certificate of formation, and "bylaws" shall mean the limited liability  
29 company agreement.

30 (4) The name of a professional limited liability company must  
31 contain either the words "Professional Limited Liability Company," or  
32 the words "Professional Limited Liability" and the abbreviation "Co.,"  
33 or the abbreviation "P.L.L.C." provided that the name of a professional  
34 limited liability company organized to render dental services shall  
35 contain the full names or surnames of all members and no other word  
36 than "chartered" or the words "professional services" or the  
37 abbreviation "P.L.L.C."

38 (5) Subject to the provisions in article VII of this chapter, the  
39 following may be a member of a professional limited liability company

1 and may be the transferee of the interest of an ineligible person or  
2 deceased member of the professional limited liability company:

3 (a) A professional corporation, if its shareholders, directors, and  
4 its officers other than the secretary and the treasurer, are licensed  
5 or otherwise legally authorized to render the same specific  
6 professional services as the professional limited liability company;  
7 and

8 (b) Another professional limited liability company, if the managers  
9 and members of both professional limited liability companies are  
10 licensed or otherwise legally authorized to render the same specific  
11 professional services.

12 **Sec. 3.** RCW 25.15.060 and 1994 c 211 s 112 are each amended to  
13 read as follows:

14 Members of a limited liability company shall be personally liable  
15 for any act, debt, obligation, or liability of the limited liability  
16 company to the extent that shareholders of a Washington business  
17 corporation would be liable in analogous circumstances. In this  
18 regard, the court may consider the factors and policies set forth in  
19 established case law with regard to piercing the corporate veil, except  
20 that the failure to hold meetings of members or managers or the failure  
21 to observe formalities pertaining to the calling or conduct of meetings  
22 shall not be considered a factor tending to establish that the members  
23 have personal liability for any act, debt, obligation, or liability of  
24 the limited liability company if the certificate of formation and  
25 limited liability company agreement do not expressly require the  
26 holding of meetings of members or managers.

27 **Sec. 4.** RCW 25.15.085 and 1994 c 211 s 204 are each amended to  
28 read as follows:

29 (1) Each document required by this chapter to be filed in the  
30 office of the secretary of state shall be executed in the following  
31 manner:

32 (a) Each original certificate of formation must be signed by the  
33 person or persons forming the limited liability company;

34 (b) A reservation of name may be signed by any person;

35 (c) A transfer of reservation of name must be signed by, or on  
36 behalf of, the applicant for the reserved name;

1 (d) A registration of name must be signed by any member or manager  
2 of the foreign limited liability company;

3 (e) A certificate of amendment or restatement must be signed by at  
4 least one manager, or by a member if management of the limited  
5 liability company is reserved to the members;

6 (f) A certificate of cancellation must be signed by the person or  
7 persons authorized to wind up the limited liability company's affairs  
8 pursuant to RCW 25.15.295(1);

9 (g) If a surviving domestic limited liability company is filing  
10 articles of merger, the articles of merger must be signed by at least  
11 one manager, or by a member if management of the limited liability  
12 company is reserved to the members, or if the articles of merger are  
13 being filed by a surviving foreign limited liability company, limited  
14 partnership, or corporation, the articles of merger must be signed by  
15 a person authorized by such foreign limited liability company, limited  
16 partnership, or corporation; and

17 (h) A foreign limited liability company's application for  
18 registration as a foreign limited liability company doing business  
19 within the state must be signed by any member or manager of the foreign  
20 limited liability company.

21 (2) Any person may sign a certificate, articles of merger, ~~((or))~~  
22 limited liability company agreement, or other document by an attorney-  
23 in-fact or other person acting in a valid representative capacity, so  
24 long as each document signed in such manner identifies the capacity in  
25 which the signator signed.

26 (3) The person executing the document shall sign it and state  
27 beneath or opposite the signature the name of the person and capacity  
28 in which the person signs. The document must be typewritten or  
29 printed, and must meet such legibility or other standards as may be  
30 prescribed by the secretary of state.

31 (4) The execution of a certificate or articles of merger by any  
32 person constitutes an affirmation under the penalties of perjury that  
33 the facts stated therein are true.

34 **Sec. 5.** RCW 25.15.130 and 1994 c 211 s 304 are each amended to  
35 read as follows:

36 (1) A person ceases to be a member of a limited liability company  
37 upon the occurrence of one or more of the following events:

1 (a) The member dies or withdraws by voluntary act from the limited  
2 liability company as provided in subsection (3) of this section;

3 (b) The member ceases to be a member as provided in RCW  
4 25.15.250(2)(b) following an assignment of all the member's limited  
5 liability company interest;

6 (c) The member is removed as a member in accordance with the  
7 limited liability company agreement;

8 (d) Unless otherwise provided in the limited liability company  
9 agreement, or with the written consent of all other members at the  
10 time, the member (i) makes a general assignment for the benefit of  
11 creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes  
12 the subject of an order for relief in bankruptcy proceedings; (iv)  
13 files a petition or answer seeking for himself or herself any  
14 reorganization, arrangement, composition, readjustment, liquidation,  
15 dissolution, or similar relief under any statute, law, or regulation;  
16 (v) files an answer or other pleading admitting or failing to contest  
17 the material allegations of a petition filed against him or her in any  
18 proceeding of the nature described in (d) (i) through (iv) of this  
19 subsection; or (vi) seeks, consents to, or acquiesces in the  
20 appointment of a trustee, receiver, or liquidator of the member or of  
21 all or any substantial part of the member's properties;

22 (e) Unless otherwise provided in the limited liability company  
23 agreement, or with the consent of all other members at the time, one  
24 hundred twenty days after the commencement of any proceeding against  
25 the member seeking reorganization, arrangement, composition,  
26 readjustment, liquidation, dissolution, or similar relief under any  
27 statute, law, or regulation, the proceeding has not been dismissed, or  
28 if within ninety days after the appointment without his or her consent  
29 or acquiescence of a trustee, receiver, or liquidator of the member or  
30 of all or any substantial part of the member's properties, the  
31 appointment is not vacated or stayed, or within ninety days after the  
32 expiration of any stay, the appointment is not vacated;

33 (f) Unless otherwise provided in the limited liability company  
34 agreement, or with written consent of all other members at the time, in  
35 the case of a member who is an individual, the entry of an order by a  
36 court of competent jurisdiction adjudicating the member (~~(incompetent~~  
37 ~~to manage his or her person or estate)) incapacitated, as used and  
38 defined under chapter 11.88 RCW, as to his or her estate;~~

1 (g) Unless otherwise provided in the limited liability company  
2 agreement, or with written consent of all other members at the time, in  
3 the case of a member that is another limited liability company, the  
4 dissolution and commencement of winding up of such limited liability  
5 company;

6 (h) Unless otherwise provided in the limited liability company  
7 agreement, or with written consent of all other members at the time, in  
8 the case of a member that is a corporation, the filing of articles of  
9 dissolution or the equivalent for the corporation or the administrative  
10 dissolution of the corporation and the lapse of any period authorized  
11 for application for reinstatement; or

12 (i) Unless otherwise provided in the limited liability company  
13 agreement, or with written consent of all other members at the time, in  
14 the case of a member that is a limited partnership, the dissolution and  
15 commencement of winding up of such limited partnership.

16 (2) The limited liability company agreement may provide for other  
17 events the occurrence of which result in a person ceasing to be a  
18 member of the limited liability company.

19 (3) ~~((Unless otherwise provided in the limited liability company  
20 agreement,))~~ A member may withdraw from a limited liability company at  
21 ~~((any time by giving thirty days' written notice to the other members))~~  
22 the time or upon the happening of events specified in and in accordance  
23 with the limited liability company agreement. If the limited liability  
24 company agreement does not specify the time or the events upon the  
25 happening of which a member may withdraw, a member may not withdraw  
26 prior to the time for the dissolution and commencement of winding up of  
27 the limited liability company, without the written consent of all other  
28 members at the time.

29 **Sec. 6.** RCW 25.15.220 and 1994 c 211 s 602 are each amended to  
30 read as follows:

31 Unless otherwise provided in the limited liability company  
32 agreement, upon the occurrence of an event of dissociation under RCW  
33 25.15.130 which does not cause dissolution (other than an event of  
34 dissociation specified in RCW 25.15.130(~~(+2)~~)) (1)(b) where the  
35 dissociating member's assignee is admitted as a member), a dissociating  
36 member (or the member's assignee) is entitled to receive any  
37 distribution to which ((the member (or assignee) is entitled under the  
38 limited liability company agreement and, if not otherwise provided in

1 ~~a limited liability company agreement, the member (or the member's~~  
2 ~~assignee) is entitled to receive, within a reasonable time after~~  
3 ~~dissociation, the fair value of the member's limited liability company~~  
4 ~~interest as of the date of the dissociation based upon the member's~~  
5 ~~right to share in distributions from the limited liability company)) an~~  
6 ~~assignee would be entitled.~~

7       **Sec. 7.** RCW 25.15.250 and 1994 c 211 s 702 are each amended to  
8 read as follows:

9       (1) A limited liability company interest is assignable in whole or  
10 in part except as provided in a limited liability company agreement.  
11 The assignee of a member's limited liability company interest shall  
12 have no right to participate in the management of the business and  
13 affairs of a limited liability company except:

14       (a) Upon the approval of all of the members of the limited  
15 liability company other than the member assigning his or her limited  
16 liability company interest; or

17       (b) As provided in a limited liability company agreement.

18       (2) Unless otherwise provided in a limited liability company  
19 agreement:

20       (a) An assignment entitles the assignee to share in such profits  
21 and losses, to receive such distributions, and to receive such  
22 allocation of income, gain, loss, deduction, or credit or similar item  
23 to which the assignor was entitled, to the extent assigned; and

24       (b) A member ceases to be a member and to have the power to  
25 exercise any rights or powers of a member upon assignment of all of his  
26 or her limited liability company interest.

27       (3) For the purposes of this chapter, unless otherwise provided in  
28 a limited liability company agreement:

29       (a) The pledge of, or granting of a security interest, lien, or  
30 other encumbrance in or against, any or all of the limited liability  
31 company interest of a member shall not be deemed to be an assignment of  
32 the member's limited liability company interest, but a foreclosure or  
33 execution sale or exercise of similar rights with respect to all of a  
34 member's limited liability company interest shall be deemed to be an  
35 assignment of the member's limited liability company interest to the  
36 transferee pursuant to such foreclosure or execution sale or exercise  
37 of similar rights;

1       (b) (~~The death of a member who is an individual shall be deemed to~~  
2 ~~be an assignment of that member's entire limited liability company~~  
3 ~~interest to his or her personal representative;~~

4       ~~(c)~~) Where a limited liability company interest is held in a trust  
5 or estate, or is held by a trustee, personal representative, or other  
6 fiduciary, the transfer of the limited liability company interest,  
7 whether to a beneficiary of the trust or estate or otherwise, shall be  
8 deemed to be an assignment of such limited liability company interest,  
9 but the mere substitution or replacement of the trustee, personal  
10 representative, or other fiduciary shall not constitute an assignment  
11 of any portion of such limited liability company interest.

12       (4) Unless otherwise provided in a limited liability company  
13 agreement and except to the extent assumed by agreement, until an  
14 assignee of a limited liability company interest becomes a member, the  
15 assignee shall have no liability as a member solely as a result of the  
16 assignment.

17       **Sec. 8.** RCW 25.15.280 and 1994 c 211 s 803 are each amended to  
18 read as follows:

19       The secretary of state may commence a proceeding under RCW  
20 25.15.285 to administratively dissolve a limited liability company if:

21       (1) The limited liability company does not pay any license fees or  
22 penalties, imposed by this chapter, when they become due;

23       (2) The limited liability company does not deliver its completed  
24 initial report or annual report to the secretary of state when it is  
25 due;

26       (3) The limited liability company is without a registered agent or  
27 registered office in this state for sixty days or more; or

28       ~~((2))~~ (4) The limited liability company does not notify the  
29 secretary of state within sixty days that its registered agent or  
30 registered office has been changed, that its registered agent has  
31 resigned, or that its registered office has been discontinued.

32       **Sec. 9.** RCW 25.15.310 and 1994 c 211 s 901 are each amended to  
33 read as follows:

34       (1) Subject to the Constitution of the state of Washington:

35       (a) The laws of the state, territory, possession, or other  
36 jurisdiction or country under which a foreign limited liability company

1 is organized govern its organization and internal affairs and the  
2 liability of its members and managers; and

3 (b) A foreign limited liability company may not be denied  
4 registration by reason of any difference between those laws and the  
5 laws of this state.

6 (2) A foreign limited liability company is subject to RCW 25.15.030  
7 and, notwithstanding subsection (1)(a) of this section, a foreign  
8 limited liability company rendering professional services in this state  
9 is also subject to RCW 25.15.045(2).

10 (3) A foreign limited liability company and its members and  
11 managers doing business in this state thereby submit to personal  
12 jurisdiction of the courts of this state and are subject to RCW  
13 25.15.125.

14 **Sec. 10.** RCW 24.06.045 and 1994 c 211 s 1307 are each amended to  
15 read as follows:

16 The corporate name:

17 (1) Shall not contain any word or phrase which indicates or implies  
18 that it is organized for any purpose other than one or more of the  
19 purposes contained in its articles of incorporation.

20 (2) Shall not be the same as, or deceptively similar to, the name  
21 of any corporation existing under any act of this state, or any foreign  
22 corporation authorized to transact business or conduct affairs in this  
23 state under any act of this state, or the name of any limited liability  
24 (~~corporation~~) company organized or authorized to transact business  
25 under any act of this state, the name of a domestic or foreign limited  
26 partnership on file with the secretary, or a corporate name reserved or  
27 registered as permitted by the laws of this state. This subsection  
28 shall not apply if the applicant files with the secretary of state  
29 either of the following: (a) The written consent of the other  
30 corporation, limited liability company, limited partnership, or holder  
31 of a reserved name to use the same or deceptively similar name and one  
32 or more words are added or deleted to make the name distinguishable  
33 from the other name as determined by the secretary of state, or (b) a  
34 certified copy of a final decree of a court of competent jurisdiction  
35 establishing the prior right of the applicant to the use of the name in  
36 this state.

37 (3) Shall be transliterated into letters of the English alphabet if  
38 it is not in English.

1 (4) The name of any corporation formed under this section shall not  
2 include nor end with "incorporated", "company", or "corporation" or any  
3 abbreviation thereof, but may use "club", "league", "association",  
4 "services", "committee", "fund", "society", "foundation", ". . . . . ,  
5 a nonprofit mutual corporation", or any name of like import.

6 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and shall take  
9 effect immediately.

--- END ---